Estate Planning Overview and Issues in Self-Representation

Brandon A. Borgmann
Andrew J. Marvin
What is Your Estate?

Your Estate = Your Assets – Your Liabilities

- Assets include bank accounts, retirement plans, stocks and bonds, real estate, automobiles, certificates of deposit, life insurance proceeds, etc.
- Liabilities include car loans, mortgages, credit card debt, student loans, etc.
- Example: Joe has a house worth $125,000, a car worth $5,000, a checking account worth $3,500, and a mortgage on his house with a balance of $25,000. Joe’s net estate is $108,500 which is his assets (125,000+5,000+3,500) minus his liabilities (25,000).
What is Estate Planning?

• Preparing your estate for an orderly and efficient distribution during life and upon death
• Providing for the continuation or termination of a family or closely held business
• Reducing estate taxes, when applicable
Why Plan?

Planning allows you to control:

• Who will make health care decisions on your behalf if you are unable to do so
• Who will make financial decisions on your behalf if you are unable to do so
• Who will receive property when you die
• Who will be the guardian of your minor children if you die
• Who will be the executor of your estate
Who Should Plan?

• All individuals 18 years or older

• Planning is essential regardless of the size of your estate. No estate is too small to make planning unnecessary.

• Any individual recently married, recently widowed, recently divorced, had a child, inherited property, lost a loved one, moved to a new state, etc.
Common Estate Planning Documents

• Durable General Power of Attorney
• Health Care Power of Attorney
• Living Will Declaration
• Last Will & Testament (“Will”)  
• Trust
Durable General Power of Attorney

• Also known as a Financial Power of Attorney
• Appoints a person as agent to manage your financial and/or personal affairs
• Avoids the necessity of a guardianship (an adult needs a guardianship if mentally disabled)
• Guardianship involves a judicial proceeding and ongoing court supervision (costly and time consuming)
Health Care Power of Attorney

- Gives another person (the health care agent) the power to make health care decisions in the event you lose the capacity to make informed health care decisions for yourself
- Also avoids the need for a guardianship over your person
Living Will Declaration

• Governs the use of life-sustaining treatment if you are terminally ill or permanently unconscious and unable to communicate with your doctor

• A living will takes the life-sustaining treatment decision out of others hands (e.g., family)
Last Will & Testament

• Directs who receives your estate when you die
• Appoints an executor of your estate.
• An Executor is the person who ensures the terms of your Will are carried out as directed
• Can appoint a guardian of minor children
Advantages of Having a Will

• Nominate a guardian of your minor children. If you fail to nominate a guardian then the probate court has sole discretion to select a guardian.

• Control who receives your property rather than leaving it up to state law

• Make specific bequests

• Save needless administrative expenses

• Nominate your Executor rather than having the court appoint an Administrator
What Happens Without a Will

• If you die without a Will, distribution of your property is made according to State law

• Under State law, distribution of property is based on your marital status

• If you are separated or in the process of getting a divorce, you are treated under the law as a married individual. With proper planning, you can disinherit a spouse.
Death Without a Will – Single Individual

• If no spouse, but with children, your assets pass to your children in equal shares
• If no spouse and no children, then your assets pass to your parents, if living
• If no spouse, no children and no parents, then your assets pass to your siblings
Death Without a Will – Married Individuals

• If married without children or with children of which the surviving spouse is the natural or adoptive parent of all the children, then all assets go to the surviving spouse

• If married with one child who is not the natural or adoptive child of the surviving spouse, the surviving spouse takes the first $20,000, plus one-half of the balance of the property, the remainder to the child

• If married with more than one child and the surviving spouse is the natural or adoptive parent of at least one of the children, the surviving spouse takes the first $60,000, plus one-third of the balance of the property, the remainder equally to the children
Why is Property Ownership Important in Estate Planning?

• A Will only controls certain property (i.e., only property titled in your name alone)

• Certain jointly owned property passes automatically to the survivor without regard to your Will

• Insurance proceeds and retirement plan death benefits will be paid to the designated beneficiary
Why is Property Ownership Important in Estate Planning?

• Transfer on Death (TOD) and payable on Death (POD) assets pass to the TOD or POD beneficiary

• Jointly owned property does not reduce estate taxes
Estate Planning Tips

1. Plan for disability
2. Everyone needs a Will
3. Nominate a guardian for minor children
4. Nominate a trustworthy executor
5. State law determines distribution of assets without a Will
6. Titling of assets is important
7. Do not name your estate as beneficiary
8. State and federal law determine estate taxes
9. Contact an attorney before gifting over $14,000
Probate Court

- Each county has its own rules and most likely has its own forms
- Look at the county’s local rules
- Look at the county’s local forms
  - http://probate.franklincountyohio.gov/forms/
- Most counties require original signatures on their forms and do not allow or use e-filing
- Franklin County allows e-filing for civil cases and adoptions
Fiduciary Titles

• Executor

• Administrator

• Administrator WWA
Probate Vs. Non-Probate Property

Probate Property

• Property owned by decedent in his or her sole name at their death

Non-Probate Property

• Any asset that is jointly owned with a right of survivorship, has a transfer on death or pay on death beneficiary, has a designated beneficiary, or is titled in the name of a trust or third party

• Not affected by a will or probate laws
Types of Probate Cases

- Civil
- Name Changes
- Guardianships
- Adoptions
- Estate Administration
  - Basic Types:
    - Real Estate Only
    - Summary Release from Administration
    - Release from Administration
    - Full Estate Administration
Types of Estate Administration

• Real Estate Only

• Summary Release from Administration
  • If there is a surviving spouse, estates less than $40,000
  • If not, estates less than $5,000

• Release from Administration
  • If there is a surviving spouse, estates less than $100,000
  • If not, estates less than $35,000

• Full Estate Administration
Self-representation Issues

- Misidentifying/lacking knowledge of assets.
- Misidentifying/lacking knowledge of beneficiaries and/or family members.
- Often times not objective and/or have self-interest in the issue.
Self-representation Issues

• Requesting legal assistance after undertaking self-representation. (Clean-up needed)

• Process can take longer than anticipated.

• Process can become more complicated than anticipated.
For Further Information or Questions Contact:

Brandon A. Borgmann  
Partner, Carlile Patchen & Murphy LLP  
bborgmann@cpmlaw.com  
(614) 628-0867

Andrew J. Marvin  
Associate, Carlile Patchen & Murphy LLP  
amarvin@cpmlaw.com  
(614) 628-0826